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ABSTRACT

New court decisions that have claims like those of the National Labor Relations Board (NLRB) versus Yeshiva University case are described, along with the impact of the Yeshiva decision. Information on 1985 work stoppages is also provided. In addition to abstracts of the recent decisions regarding Cooper Union and Lewis University, findings are described of the 1984 NLRB case in Universidad Central de Bayamon. Nearly 6 years ago, the U.S. Supreme Court ruled that Yeshiva faculty were managers and as such were not entitled to bargain under the protection of the National Labor Relations Act. During this time period, there have been about 55 Yeshiva-like claims that have resulted in, for the most part, an upholding and reiteration of the "Yeshiva doctrine." One reason for a recent reduction of Yeshiva litigation is that many in the academic collective bargaining community view the Yeshiva case as moot. In addition, Yeshiva has virtually brought about a complete halt in union organizing at private colleges and universities. Thus far, attempts to extend Yeshiva into the public sector have been minimal. A calendar showing the current status of each Yeshiva claim is included. A subject index to newsletter volumes 12-13 is also presented. (SW)

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NEWSLETTER NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS

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"YESHIVAWATCH" -- YEAR SIX

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NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS

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"YESHIVAWATCH" — YEAR SIX

INTRODUCTION

It has been nearly six years since the United States Supreme Court ruled in NLRB v. Yeshiva University, 444 U.S. 672, that the faculty at Yeshiva University were managers and as such were not entitled to bargain under the protection of the National Labor Relations Act. During this time period, there have been approximately fifty-five Yeshiva-like claims which have resulted in, for the most part, an upholding and reiteration of the "Yeshiva doctrine." (See Table No. 1 for Yeshiva Calendar). Since that decision was handed down the National Center has maintained a "Yeshivawatch" in which we track and analyze each and every Yeshiva related claim. For a complete summary of the Yeshiva decision and the "Yeshivawatch" Years One through Five, the reader is referred to NCSCBHEP Newsletters Vol. 8, No. 1; Vol. 9, No. 2; Vol. 10, No. 3; Vol. 11, No. 4 and Vol. 12, No. 3.

The number of Yeshiva related cases adjudicated since we last updated our "Yeshivawatch" in the summer of 1984 dropped to two, making this the lowest number of such claims since the Center began this project in 1980. This reduction in the number of claims is suggestive of several points, the more salient of which are set forth below. First, and perhaps the most frequently held reason for the reduction of Yeshiva litigation is that many in the academic collective bargaining community now view the Yeshiva case as moot. The basic thrust of the decision remains intact and the various adjudicating agencies, i.e., regional NLRB's, the NLRB, district and circuit courts of appeals have all applied the Yeshiva test in a ministerial function. In other words, the Yeshiva framework as set down by Justice Powell has virtually been superimposed on the instant case. If the record supports the managerial contention then the NLRA protections are withheld from the faculty bargaining unit; if not, the employer is ordered to take part in the collective bargaining process. In no case, has the "Yeshiva doctrine" been set aside.

The second reason most frequently encountered for the reduction of Yeshiva related litigation centers on the demise of collective bargaining in private universities and colleges. To say that the decision has had a chilling effect on unionization at these campuses is to understate the case. Yeshiva has virtually brought about a complete halt in union organizing at private institutions. The number of private colleges and universities unionized prior to Yeshiva was eighty-nine, while the number of private unionized institutions today stands at seventy-four. Private sector collective bargaining in higher education remains largely a voluntary process or accommodation in which the parties have chosen not to disagree or agree on the meaning of Yeshiva.

Unless some dramatic reversal occurs in recent decisions, most notably either Boston University or Cooper Union, the Yeshiva litany has become somewhat predictable. Even more discouraging from organized labor's viewpoint is the lack of any new lead case in the pipeline behind which the three national faculty organizations can rally.

The lack of any impact on public sector collective bargaining is the third reason attributed to the reduction in Yeshiva litigation during the past academic year. Thus far, the attempts to extend Yeshiva into the public sector have been minimal although it is interesting to note that the two most recently enacted collective bargaining statutes, Ohio and Illinois, avoid the Yeshiva question by specifically extending collective bargaining rights to the professoriate.

This Newsletter contains abstracts of the recent decisions in Cooper Union and Lewis University. We have also included the findings of the NLRB in Universidad Central de Bayamon a 1984 case that was omitted from previous Newsletters. Additionally, a "Yeshivawatch" Calendar, which shows the current status of each claim, is included.

TABLE OF CONTENTS

"Yeshivawatch" - Year Six..... p. 1
Cooper Union..... p. 2
Lewis University..... p. 2
Universidad Central de Bayamon..... p. 3
"Yeshivawatch" Calendar..... p. 4
Strikes..... p. 6
Index..... p. 7

Item No. 29: Cooper Union - 2 - CA-17843 (1983), 273 NLRB No. 214 (1985)

The NLRB, in a decision rendered by Chairman Dotson and members Hunter and Dennis, reversed a 1983 ruling by the NLRB Regional Director which had held that the Cooper Union Federation of College Teachers (CUFCT) was not a labor organization within the meaning of the NLRA and not entitled to bargain collectively under the protection of the Act. The Board found that:

> In the instant case, the judge conclude that under Yeshiva and subsequent Board decisions the faculty of Cooper Union have sufficient authority to formulate and effectuate policy to be excluded from the coverage of the Act as managerial employees, and consequently recommended dismissing the complaint. Our disagreement with the judge's conclusion and recommendation stems from our disagreement with certain of his factual findings and from our disagreement with his application of Yeshiva principles to the facts of this case.
>
> The judge based his conclusion that the Respondent's faculty members are managerial employees partly on his findings (1) that the faculty predominate in "almost all" of the governance committees; (2) that the administrative committees play a central role in faculty involvement in both academic and administrative (financial and personnel) matters; and (3) that significant faculty input into nonacademic matters was shown in the Union's 1979 negotiations with the Respondent resulting in the reintegration of the Liberal Arts and Science faculty into the degree-granting schools. These key findings misinterpret the evidence. It is clear, as noted above, that even according to the terms of the governances, full-time faculty (bargaining unit) members constitute a numerical minority on most of the governance committees and constitute something less than a voting majority on about half of them. The proportion of faculty members who vote on the committees is further reduced in some cases by administrators voting on committees in contravention of the terms of the governances.

The Board further stated that even though the faculty "clearly exercise considerable authority in academic areas such as curriculum, admissions, academic standards, course assignments and scheduling, such authority not only is not absolute as was the authority of the Yeshiva faculty, but frequently has been made ineffective by the administration...." It appears that the Board reached beyond the governance structure of the institution and analyzed the impact that the faculty decision-making process had on the administration of the college. The Board also cited examples where the administration acted without faculty input in the elimination of entire degree programs as evidence that the faculty were not managerial.

The Board appeared to stress the lack of substantial faculty input into "nonacademic matters such as budget, facilities planning, and personnel decisions." Concerning personnel matters, most notably hiring, promotion, tenure and retention, the Board found that many of these decisions "are frequently made in the absence of faculty recommendations, and when they are made following faculty recommendations, these recommendations are frequently rejected."

Cooper Union is required to bargain with the union and its refusal to do such is a violation of the National Labor Relations Act. It should be noted that the institution has appealed the decision to the United States Court of Appeals.

While several union leaders cite the decision in Cooper Union as a major reversal of NLRB policy, it does not appear to represent any departure from previous cases. Cooper Union is consistent with previous Board rulings. In the totality of the "Yeshivawatch", Cooper Union is significant for the careful and analytical method in which the Board reviewed the governance process of the institution and went beyond its structural components.

Item No. 30: Lewis University 265 NLRB 157, (1982), USCA 7th Cir. Ct., No. 83-2873 (1985)

In a two-to-one decision, United States Court of Appeals for the 7th Circuit reversed the decision of the NLRB and held that the faculty of the College of Arts and Sciences at Lewis University are managerial and cannot bargain under the protection of the NLRA. The Board had previously ruled that the faculty at Lewis were nonmanagerial when it dismissed a unit clarification petition submitted by Lewis which had sought a declaration of managerial status for all employees.

In reversing the finding of the NLRB, the Court stated:

> The NLRB asserts, nonetheless, that the decisions made by the full-time faculty members of the College of Arts and Sciences are not managerial in nature but merely an exercise of independent "professional judgment." We reject the NLRB's argument as it reflects a lack of sensitivity to, and knowledge of, the unique characteristics of a truly academic setting. The record contains no evidence to suggest that

> the recommendations, decisions, and proposals of the full-time faculty are simply independent "professional judgments" made for personal interests rather than collegial decisions made for the overall good of Lewis University. Instead, the record reveals that the predominant policy at a small, private institution such as Lewis is to "operate a quality institution of higher learning that will accomplish broadly defined educational goals within the limits of its financial resources." Yeshiva, 444 U.S. at 688. To accomplish its educational objectives, Lewis University must depend upon "the professional judgment of its faculty to formulate and apply crucial policies constrained only by necessarily general institutional goals. The university requires faculty participation in governance because professional expertise is indispensable to the formulation and implementation of academic policy." Id. at 689. When the College of Arts and Sciences full-time faculty members formulate and implement policies to promote the objectives of Lewis University, they improve the academic quality of the college, which in turn, improves the professional status and reputation of the faculty as well as the educational opportunities for students. As a result, the full-time faculty's professional interests—as applied to governance at a university such as Lewis—cannot be separated from those of the institution.

The court added that in certain areas, such as the budgetary process, the Lewis University faculty exercised greater control than that found at Yeshiva University. The court distinguished Lewis from Loretto Heights College v. NLRB, 742 F.2d 1245 (10th Cir. 1984) and stated that "in stark contrast, the evidence presented in this case reveals that the full-time faculty of the College of Arts and Sciences at Lewis University have substantial authority, responsibility, and control of the formulation and implementation of education policies with the College...Thus, the faculty governance structure within the College of Arts and Sciences is clearly distinguishable from the very limited faculty participation in the governance at Loretto Heights College."

The court concluded that "the evidence establishes that the full-time faculty members, just as the faculty members in Yeshiva are managerial personnel excluded from the Act."

Both Lewis and Cooper Union represent appellate litigation in the Yeshiva matter. Whether or not this is a trend or unique to these two cases is not known at this time. However, it is interesting to note that both appeals resulted in reversals of the previous decisions.

Item No. 31 Universidad Central De Bayamon 273 NLRB No. 138 (1984)

In a case involving both Yeshiva and Catholic Bishop, the NLRB affirmed the findings of the regional director which held that the faculty at the Universidad Central De Bayamon were not managerial and were entitled to bargain under the protection of the NLRA. The question in Catholic Bishop involved a jurisdictional challenge which was ultimately resolved in favor of the Board. The main Yeshiva claim was that the employees of the Universidad were managerial and/or supervisory and as such lacked the protection of the NLRA. The ALJ rejected that contention and found that the faculty were not managerial and that "it cannot be fairly concluded that the faculty control over curriculum was absolute." The Board stated:

> In sum, it cannot be fairly concluded that faculty control over curriculum was absolute. At best, it was partial and the result of professional knowledge. Other than curriculum, there is little to support Respondent's contention. Unlike Yeshiva University, professors do not decide when courses will be scheduled. With the policy of open admissions, and despite faculty recommendations that more capable students be enrolled in their respective programs, it was the administration which decided who shall be taught, and not the faculty. There is no evidence that the faculty decided which students will be admitted, retained, or graduated. The faculty's views have not determined the size of the student body, the tuition to be charged, the location of a school, or anything related to the financial affairs of the University, those being the exclusive domain of Respondent's administration. Unlike the secondary features of faculty authority noted in footnote 23 of Yeshiva University, quoted above, the faculty plays no role in hiring, tenure, sabbaticals, termination, and promotion. Finally, even in those areas where the faculty has contributed, recommendations have frequently been disregarded.

The Board noted that this decision is closely related to Bradford College, 261 NLRB 81 (1982) in which the faculty were also found to be nonmanagerial employees. The question of the supervisory status of the faculty was also raised and found to have no merit.

It should be noted that at the time of the original decision of the instant case Yeshiva had not yet been appealed to the USSC and therefore, the Board was guided by the findings of the appellate court.

"YESHIVAWATCH" CALENDAR

School	Date Initiated	Date Resolved	Mgrs.	Non-Mgrs.	Adjudicated By
Adrian College	1980	1983		x	Reg. NLRB Dir.
American Internat'l College[1]	1979				Pending/NLRB
American University Eng. Lang. Inst.	1982	1982		x	Reg. NLRB Dir.
Ashland College	1980	1982			WD/Vol. Res.[2]
Boston University	1975	1984	x		Reg. NLRB Dir.
Bradford College	1981	1982		x	NLRB
Catholic Univ. Law School	1980	1980	x		USCCA for Dist. of Columbia
Coll. of Osteo. Medicine & Surgery	1981	1982	x		NLRB
College of Saint Teresa	1979	1981			WD/Vol. Res.
Cooper Union	1980	1985		x	NLRB
Curry College	1980	1980			WD/Vol. Res.
Daemen College	1980	1981			WD/Vol. Res.
Drury College	1978	1982			WD/Vol. Res.
Duquesne Univ.	1979	1982	x		NLRB
Florida Memorial College	1980	1982		x	NLRB
Ithaca College	1980	1982	x		NLRB
Kendall School of Design	1980	1982		x	Reg. NLRB Dir.
Lewis University	1980	1985	x		USCCA 7th Cir.
Livingstone College[3]	1981	1981		x	Reg. NLRB Dir., On Appeal to NLRB
Long Island Univ.					
-Brooklyn Center	1984	1984			Vol. Res.
-C. W. Post	1980	1980			" "
-Coll. of Pharmacy	1983	1984			" "
-Southampton Coll.	1980	1980			" "
Loretto Heights College	1980	1984		x	USCCA 10th Cir.
Milton College	1980	1982			College Closed
Montefiore Hosp. & Med. Center	1982	1982		x	NLRB
Mt. Allison University	1981	1982		x	Indus. Rels. Bd. New Brunswick, Canada
Mt. Vernon College	1980	1980		x	USCCA for Dist. of Columbia
Nasson College	1981	1981			College Closed (Bankrupt)
New York Medical College	1982	1982		x	NLRB
Ohio Northern University	1981	1983	x		Reg. NLRB Dir./ NLRB

"YESHIVAWATCH" CALENDAR - Continued

School	Date Initiated	Date Resolved	Mgrs.	Non-Mgrs.	Adjudicated By
Parsons School of Design[4]	1983	1983		x	Reg. NLRB Dir.
Polytechnic Institute	1981	1984	x		Reg. NLRB Dir.
Pratt Institute	1980	1981		x	NLRB
Puerto Rico Junior College	1982	1982		x	NLRB
Rio Grande College	1982	1983			WD/Vol. Res.
St. Joseph's College[1]	1981	1982		x	Reg. NLRB Dir.
Salem College	1980	1981	x		NLRB
Seattle College	1980	1980			
Seton Hall Univ.	1982	1983	x		Reg. NLRB Dir.
Simon's Rock Early College	1982	1982			WD/Vol. Res.
Stephens College, Missouri	1981	1983	x		Reg. NLRB Dir.
Stephens Institute Academy of Art	1980	1980		x	USCCA 9th Cir.
Stevens Institute of Technology	1980	1982	x		Reg. NLRB Dir.
Thiel College	1979	1982	x		NLRB
Univ. of Alaska	1980	1981			Alaskan Labor Rels. Agency N/A Pub. Sector
Univ. of Albuquerque	1980	1980	x		NLRB
Univ. Central De Bayamon	1979	1984		x	Reg. NLRB Dir./ NLRB
Univ. of New Haven	1980	1982	x		NLRB
Villanova Univ.	1980	1980			
Wagner College	1980	1982	x		Reg. NLRB Dir.
Wichita State University	1981	1981			Kansas PERB N/A Pub. Sector
Wilberforce Coll.	1978	1982			
Wordsworth Academy	1982	1982		x	NLRB
Yeshiva University	1979	1980	x		USSC

[1]Appeal pending before NLRB.

[2]Withdrawn/voluntary resolution.

[3]Election results impounded by NLRB. Appeal pending.

[4]Unit consists of part-time faculty only.

Source: NCSCBHEP Research

FACULTY WORK STOPPAGES — 1985

BACK-TO-SCHOOL STRIKES

Six back-to-school strikes were reported during the outset of the fall 1985-1986 Academic Year. This marked the second consecutive year in which there were six fall work stoppages. Three of the strikes occurred at private colleges in the metropolitian New York City area while the other were at public institutions in the Midwest. No distinction was observed between agents and strike frequency as all three of the national unions were involved on the strike scene. Three stoppages involved AFT locals, two AAUP locals and one the NEA. The average length of each strike was 5.3 days with the shortest strike being reported at Lakeland Community College—two days. The longest strike occurred at Long Island University C.W. Post—11 days. In terms of private versus public colleges, this marks the first year that the number of stoppages in private colleges equaled that of public institutions.

Back-to-school strikes occurred at Hofstra University, New York, Lakeland Community College, Ohio, Long Island University Brooklyn Center, Long Island University C.W.Post Center, Oakland University, Michigan , and Triton College, Illinois. At four of these institutions, faculty engaged in repeat strikes. A previous stoppage occurred at Hofstra in 1979. L.I.U. C.W. Post had earlier strikes in 1974 and 1977 while the Brooklyn Center struck in 1979 and 1980. The previous stoppages at Oakland University were in 1971 and 1976. At Lakeland and Triton, these were the first strikes. The main impasse item in each of these stoppages was salary and related issues.

STRIKE REPORT

Set forth below is a brief description of each reported stoppage:

A. **HOFSTRA UNIVERSITY** The faculty at Hofstra engaged in a six-day walkout over the issue of salary and related economic questions. The AAUP is the bargaining agent for a bargaining unit of 450 full- and part-time faculty. The new agreement covers a three year time period. Faculty at Hofstra have been organized since 1973.

B. **LAKELAND COMMUNITY COLLEGE** In the briefest of all reported fall 1985 strikes, 113 faculty members took part in a two-day work stoppage culminating in a one-year agreement. The major impasse item was salary. The faculty at Lakeland have been represented by the NEA since 1978.

C. **LONG ISLAND UNIVERSITY- Brooklyn Center** The AFT/NYSUT affiliate at this instituion engaged in their third strike with questions about tenure and continuing employment identified as the major issue. A three-year agreement resulted from this four-day walkout. Faculty at the Brooklyn Center first organized in 1972 and have been represented by the AFT since that time. The bargaining unit consists of some 250 faculty members.

D. **LONG ISLAND UNIVERSITY-C.W.Post Center** Faculty at Post engaged in an 11 day stoppage making this the longest strike of the fall semester. The issue in this, Post's third major strike was salary, which was settled when the parties reached a new three-year agreement. The AFT, the bargaining agent at Post since 1975, represents 350 faculty members.

E. **OAKLAND UNIVERSITY** Salary and retirement benefits were the principle issues in this 3-day walkout at Oakland. These issues were settled when the parties accepted a new three-year contract. This was Oakland's third strike. The AAUP has been the bargaining agent since 1971 and currently represents some 330 faculty members.

F. **TRITON COLLEGE** A 6-day stoppage over salary was settled when the parties agreed to a new two-year agreement. The AFT affiliate represents

TABLE ONE
FACULTY WORK STOPPAGES - 1985

Fall Semester 1985

Institution	Agt.	2/4 Yr.	Length (Days)
*Hofstra Univ.	AAUP	4	6
Lakeland C.C.	NEA	2	2
*LIU-Brooklyn	AFT	2	4
*LIU-C.W. Post	AFT	4	11
Oakland Univ.	AAUP	4	3
Triton College	AFT	2	6

Source: NCSCBHEP Research

TABLE TWO
STRIKE SUMMARY
"BACK-TO-SCHOOL STRIKES"
FALL SEMESTER 1977-1985

Fall Semester	Number of Strikes
1977	6
1978	10
1979	11
1980	8
1981	4
1982	0
1983	2
1984	6
1985	6

Source: NCSCBHEP Research

some 226 faculty. This was the first strike at Triton since the faculty first organized in 1973.

SUMMARY

Table One sets forth the strike experience for the 1985-1986 fall semester.

Table Two summarizes the fall semester back-to-school strike history since 1977. Fifty-three stoppages have been identified in this grouping with 5.9 strikes reported each fall semester. This year's experience of six fall strikes is consistent with data for the nine year period. Strikes continue to be of a relatively short duration, approximately one week, and are generally over economic issues. For a complete analysis of faculty work stoppages in higher education, the reader is referred to National Center Newsletter, Volume 11, No. 5, December 1983.

SUBJECT INDEX TO NATIONAL CENTER NEWSLETTER, VOLUMES 12 — 13

The Newsletter of the National Center has gradually evolved from its original format which had been primarily designed to report contract settlements and other "news" type topics to a vehicle in which research articles can be presented to the reader. With this shift has come a realization that during the last several years each Newsletter has been largely devoted to a central theme, all of which are indexed below for the two-year period, January 1984 - December 1985.

AAUP, Vol. 12, n. 2: 1-10
AAUP v. Bloomfield College, Vol. 12, n. 2: 3
Academic/Corporate Partnerships
  Do Academic/Corporate Partnerships Pose New Threats to Faculty Employment Relations in Institutions of Higher Education? Vol. 12, n. 4: 1-6
Academic Judgment, Vol. 13, n. 2: 2-3
Administration
  Is Concession Bargaining A Threat to Stability in Higher Education Collective Bargaining: The Administration's Perspective, Vol. 12, n. 5: 4-6
  Market Forces; The Administrative Position, Vol. 13, n. 4: 2
  The Strike at Yale: Administration Perspective, Vol. 13, n. 3: 1-3
Agents Elected, Vol. 13, n. 1: 1-6, Vol. 12, n. 1: 1-2
Arbitration
  An Analysis of the Arbitration Clause in Collective Bargaining Agreements in Higher Education, Vol. 13, n. 2: 1-8
Arbitrators, Vol. 13, n. 2: 1-8
Atlantic Community College, Vol. 12, n. 2: 3

Bargaining Agents
  Unionization Among College Faculty 1983, Vol. 12, n. 1: 1-4
  Unionization Among College Faculty 1984, Vol. 13, n. 1: 1-6
Black Hawk College, Vol. 13, n. 1: 1, 5
Blue Collar Workers
  The Strike at Yale, Vol. 13, n. 3: 1-8
Boston University, Vol. 13, n. 1: 2, 6
  Vol. 13, n. 4: 6-7
Burlington Community College, Vol 12, n. 4: 7
BRAIN Update, Vol. 13, n. 1: 7

C. W. Post Center - (LIU), Vol. 13, n. 5: 6
California State University, Vol. 13, n. 4: 3
City University of New York, Vol. 13, n. 4: 7
  Vol. 13, n. 2: 2
Concession Bargaining
  Is Concession Bargaining a Threat to Stability in Higher Education Collective Bargaining? Vol. 12, n. 5: 1-6
Contract Analysis, Vol. 13, n. 4: 7-8, Vol. 12, n. 1: 1-4
Contracts
  Unionization Among College Faculty January 1 - December 31, 1984, Vol. 13, n. 1: 4
Collective Bargaining
  Is Concession Bargaining A Threat to Stability In Higher Education Collective Bargaining? Vol. 12, n. 5: 1-6
  An Analysis of the Arbitration Clause in Collective Bargaining Agreements in Higher Education, Vol. 13, n. 2: 1-8
  New Collective Bargaining Legislation 1983, Vol. 12, n. 1: 4-8
  Tenure Rights in Higher Education in the Face of Financial Exigency: The Impact of Private Agreement, Collective Bargaining, the AAUP and the Courts, Vol. 12, n. 2: 1-10
Cooper Union, Vol. 12, n. 3:, Vol 13, n. 5: 2
Corporate Partnerships, Vol. 12, n. 4: 1-6
Decertification, Vol. 13, n. 1: 2-3, Vol. 12, n. 1: 1, 3
Delaware State College, Vol. 13, n. 4: 4

Eastern Montana College, Vol. 13, n. 4: 7
Elections
  Summary of Agents Elected - 1983, Vol. 12, n. 1: 2
  Summary of Agents Elected - 1984, Vol. 13, n. 1: 5-6

Faculty
  Do Academic/Corporate Partnerships Pose New Threats to Faculty Employment Relations in Institutions of Higher Education? Vol. 12, n. 4: 1-6
  Faculty Views Market Forces, Vol. 13, n. 4: 2
  Is Concession Bargaining A Threat to Stability in Higher Education Collective Bargaining? A Faculty Perspective, Vol. 12, n. 5: 3-4
  The Strike at Yale, The Faculty Perspective, Vol. 13, n. 3: 5-7
  Unionization Among College Faculty - 1983, Vol. 12, n. 1: 1-4
  Unionization Among College Faculty January 1 - December 31, 1984, Vol. 13, n. 1: 1-6
  Tenure Rights in Higher Education in the Face of Financial Exigency: The Impact of Private

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Subject Index Continued

Agreement, Collective Bargaining, the AAUP and the Courts, Vol. 12, n. 2: 1-10
Faculty Work Stoppages - 1984, Vol. 12, n. 4: 7
- 1985, Vol. 13, n. 5: 6-7
Ferris State College, Vol. 13, n. 4: 5-6
Financial Exigency, Vol. 12, n. 2: 1-10

Grievance Procedures
An Analysis of the Arbitration Clause in Collective Bargaining Agreements in Higher Education, Vol. 13, n. 2: 3-4

Henry Ford Community College, Vol. 12, n. 4: 7
Hofstra University, Vol. 13, n. 5: 6

Illinois
Illinois Educational Labor Relations Act - 1983, Vol. 12, n. 1: 6-8

Kellogg Community College, Vol. 12, n. 4: 7

Lakeland Community College, Vol. 13, n. 5: 6
Legal Issues, Vol. 12, n. 2: 1-10
Legislation, Vol. 13, n. 1: 3
New Collective Bargaining Legislation 1983, Vol. 12, n. 1: 4-8
Lewis University, Vol. 12, n. 3: 7, Vol. 13, n. 5: 2
Librarians, Vol. 13, n. 1: 4
Long Island University-Brooklyn Center, Vol. 13, n. 5: 6
Long Island University-C.W. Post Center, Vol. 13, n. 5: 6

Market Forces, Vol. 13, n. 4: 1-8
Miami-Dade Junior College, Vol. 13, n. 1: 2
Minnesota State University System, Vol. 13, n. 4: 3-4
Mintz, Bernard, Vol. 12, n. 5: 8
Moraine Valley Community College, Vol. 13, n. 1: 1
Morton College, Vol. 12, n. 4: 7

NLRB v. Yeshiva University, 444 U.S. 672, Vol. 12, n. 3: 1-10, Vol. 13, n. 5: 1-5
No Agents, Vol. 12, n. 1: 2, Vol. 13, n. 1: 2
Non-Faculty, Vol. 13, n. 3: 1-8

Oakland University, Vol. 13, n. 5: 6
Ohio Collective Bargaining Law 1983, Vol. 12, n. 1: 4-6
Orange Coast College, Vol. 13, n. 1: 2

Part-time Faculty, Vol. 13, n. 1: 1-6
Polytechnic Institute, Vol. 12, n. 3: 3-4
Vol. 13, n. 1: 2
Portland Community College, Vol. 13, n. 1: 2

Rider College, Vol. 13, n. 4: 6
Rio Grande College, Vol. 13, n. 4: 5

Saginaw Valley State College, Vol. 13, n. 4: 5
Strikes
Back-to-School Strikes 1984, Vol. 12, n. 4: 7
Back-to-School Strikes 1985, Vol. 13, n. 5: 6-7
Faculty Work Stoppages-1984, Vol. 12, n. 4: 7
Faculty Work Stoppages-1985, Vol. 13, n. 5: 6-7
Strike at Yale, Vol. 13, n. 3: 1-8
Support Staff
Strike at Yale, Vol. 13, n. 3: 1-8
Unionization Among College Faculty, Vol. 12, n. 1: 1-4, Vol. 13, n. 1: 1-6

Taylor Business Institute, Vol. 12, n. 4: 7
Tenure
Tenure Rights in Higher Education in the Face of Financial Exigency: The Impact of Private Agreement, Collective Bargaining, the AAUP and the Courts, Vol. 12, n. 2: 1-10
Thornton Community College, Vol. 12, n. 4: 7
Triton College, Vol. 13, n. 5: 6

Unions, Elections, Vol. 12, n. 1: 1-4
Vol. 13, n. 1: 1-6
Position of Union, Vol. 13, n. 4: 2
Unionization
Strike at Yale, Vol. 13, n. 3: 1-8
Universidad Central de Bayamon, Vol. 13, n. 5: 3
Union Representation, Vol. 13, n. 2: 4
University of California, Vol. 13, n. 1: 2
Unionization Among College Faculty, 1983, Vol. 12, n. 1: 1-4
University of Delaware, Vol. 13, n. 4: 5
Unionization Among College Faculty January 1 - December 31, 1984, Vol. 13, n. 1: 1-6
University of Dubuque, Vol. 13, n. 4: 5
University of Minnesota, Vol. 13, n. 4: 4
University of Montana, Vol. 13, n. 4: 7

Vermont State Colleges, Vol. 13, n. 4: 4

Western Michigan University, Vol. 12, n. 4: 7
Western Montana College, Vol. 13, n. 4: 6-7
White Collar Workers
Strike at Yale, Vol. 13, n. 3: 1-8
Work Stoppages, see Strikes

Yale, Vol. 13, n. 3: 1-8
"Yeshivawatch" - Year Five, Vol. 12, n. 3: 1-10
Year Six, Vol. 13, n. 5: 1-5

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